

DEPOSITION OF CHARLES ALBERT EROH, P.E.
 CONDUCTED ON WEDNESDAY, SEPTEMBER 26, 2012

29 (Pages 113 to 116)

<p style="text-align: right;">113</p> <p>1 sling before its use.</p> <p>2 Q. That you told us about earlier?</p> <p>3 A. Yes.</p> <p>4 Q. Do you know whether anyone from Meltech --</p> <p>5 strike that.</p> <p>6 Are you familiar with the Webster Gate</p> <p>7 project?</p> <p>8 A. I know it's the gate that was erected prior</p> <p>9 to the PAX River project.</p> <p>10 Q. Do you know what lifting methods were used at</p> <p>11 that gate?</p> <p>12 A. Reportedly, according to the stuff that I</p> <p>13 read for the preparation of this assignment, it was a</p> <p>14 lull and a strap.</p> <p>15 Q. The same lifting method that was used at PAX</p> <p>16 Gate?</p> <p>17 A. Yes.</p> <p>18 Q. And do you know who performed the lifts at</p> <p>19 Webster Gate?</p> <p>20 A. It was my understanding that Mr. White</p> <p>21 performed those lifts.</p> <p>22 Q. Do you know whether anyone from Meltech</p>	<p style="text-align: right;">115</p> <p>1 subcontractor? Or are there cases where the</p> <p>2 responsibility for the specific safety inspections stay</p> <p>3 with the general contractor?</p> <p>4 A. They always stay with the person that's</p> <p>5 responsible for doing the work.</p> <p>6 Q. Always?</p> <p>7 A. Yes.</p> <p>8 Q. It doesn't depend on the general contractor's</p> <p>9 degree of control?</p> <p>10 A. No. It depends on the -- White Construction,</p> <p>11 Austin Mohawk, and Beechgrove were the erectors. You</p> <p>12 hire the erector because they're experienced and you</p> <p>13 want them to perform correctly. They have the</p> <p>14 expertise to do that properly, and the responsibilities</p> <p>15 for those inspections and stuff fall within that,</p> <p>16 within their work scope.</p> <p>17 Q. And what I'm focusing on is, are there</p> <p>18 situations where a general contractor can hire a sub</p> <p>19 but the general contractor still maintains</p> <p>20 responsibility for the specific safety that in this</p> <p>21 case you say was passed on to the sub?</p> <p>22 A. No. I don't think that's -- no.</p>
<p style="text-align: right;">114</p> <p>1 observed those lifts?</p> <p>2 A. Meltech was on-site at the time that he was a</p> <p>3 general contractor. Based on my experience, I would</p> <p>4 assume that he would have observed those lifts or</p> <p>5 been -- somebody from Meltech would have been on-site</p> <p>6 when those lifts were done.</p> <p>7 Q. Do you know if McTernan was on-site when</p> <p>8 those lifts were done?</p> <p>9 A. I believe -- I'd have to go back through the</p> <p>10 testimony and check.</p> <p>11 Q. If McTernan observed the lifts at Webster</p> <p>12 Gate, would that change your opinions in this case in</p> <p>13 any way?</p> <p>14 A. No.</p> <p>15 Q. Why not?</p> <p>16 A. Because the responsibility for -- the strap</p> <p>17 broke. The responsibility for the inspection of the</p> <p>18 strap was with White Construction, Austin Mohawk, and</p> <p>19 Beechgrove.</p> <p>20 Q. Now, am I correct that whenever a controlling</p> <p>21 employer uses a subcontractor, the responsibility for</p> <p>22 those safety inspections is -- always falls on the</p>	<p style="text-align: right;">116</p> <p>1 Q. It's not possible?</p> <p>2 A. No. Not in normal construction practice, no.</p> <p>3 Q. Not in a project like this?</p> <p>4 A. No.</p> <p>5 Q. Do you agree that Meltech was responsible for</p> <p>6 providing a safe work environment in accordance with</p> <p>7 OSHA and Army Corps of Engineers' safety and health</p> <p>8 requirements?</p> <p>9 A. Generally, yes.</p> <p>10 Q. Is there any part of that statement that you</p> <p>11 disagree with?</p> <p>12 A. In general terms, no.</p> <p>13 Q. Do you agree that Meltech failed to exercise</p> <p>14 reasonable care in preventing and detecting safety</p> <p>15 violations in this case?</p> <p>16 A. No.</p> <p>17 Q. Why?</p> <p>18 A. The testimony given that I've reviewed is</p> <p>19 that Mr. McTernan did at least a walkthrough and made</p> <p>20 sure that -- did some type of an inspection on the lull</p> <p>21 and made sure that they were using a strap in</p> <p>22 accordance with the lifting plan. They had the area</p>

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31 (Pages 121 to 124)

<p style="text-align: right;">121</p> <p>1 was given the site safety and health plan?</p> <p>2 A. I'm not too sure those are two different</p> <p>3 documents. Are they?</p> <p>4 MR. MAHAFFEY: Question pending?</p> <p>5 BY MR. PEOPLES:</p> <p>6 Q. My question was, do you know, are you aware</p> <p>7 of any evidence that Mr. White was given the site</p> <p>8 safety and health plan?</p> <p>9 A. I saw nothing in his testimony that said he</p> <p>10 received it.</p> <p>11 Q. And you're not aware of any other evidence,</p> <p>12 correct?</p> <p>13 A. No.</p> <p>14 Q. Correct?</p> <p>15 A. Yes.</p> <p>16 Q. You agree that McTernan had the authority to</p> <p>17 inspect and stop work on the site and eliminate any</p> <p>18 hazards?</p> <p>19 A. I mean, McTernan did -- again, my reports</p> <p>20 reflect McTernan did what he was -- met his obligations</p> <p>21 to do what he had to do. It was Beechgrove's, Austin</p> <p>22 Mohawk's, and White's responsibility to inspect the</p>	<p style="text-align: right;">123</p> <p>1 softens the corner.</p> <p>2 Q. And if that was done, are you aware of any</p> <p>3 other -- do you have opinions regarding any other</p> <p>4 problems with the lifting methods that were used by</p> <p>5 White?</p> <p>6 A. No.</p> <p>7 Q. And what is the basis for your opinion that</p> <p>8 the sling is supposed to be protected in that way?</p> <p>9 A. It's -- in my training as a rigging</p> <p>10 inspector, in the OSHA standards, I believe it says it</p> <p>11 needs to be protected, and in the ANSI standards, I</p> <p>12 believe it says it needs to be protected. And if you</p> <p>13 read most of the manufacturers' instructions on slings,</p> <p>14 it will tell you that it needs to be protected.</p> <p>15 Q. Do you know -- are you aware of any evidence</p> <p>16 that McTernan had formal training in rigging or rigging</p> <p>17 inspection?</p> <p>18 A. Other than his deposition testimony and that</p> <p>19 document that identified his qualifications.</p> <p>20 Q. What in his deposition testimony indicated to</p> <p>21 you that McTernan had formal training in rigging?</p> <p>22 A. I think when he was asked the questions about</p>
<p style="text-align: right;">122</p> <p>1 sling.</p> <p>2 Q. My question was, do you agree that McTernan</p> <p>3 had authority to inspect and stop the work and</p> <p>4 eliminate any hazardous conditions?</p> <p>5 A. He met all his obligations to do his</p> <p>6 inspections.</p> <p>7 Q. Mr. Eroh, just answer the question.</p> <p>8 MR. MAHAFFEY: I'm going to object.</p> <p>9 BY MR. PEOPLES:</p> <p>10 Q. Do you agree that Mr. McTernan had authority</p> <p>11 to inspect and stop work and eliminate any hazardous</p> <p>12 conditions?</p> <p>13 A. He had the authority but not the</p> <p>14 responsibility, in this particular case with these</p> <p>15 particular circumstances.</p> <p>16 Q. If the sling was protected from the tines in</p> <p>17 some way -- actually, let me ask you this.</p> <p>18 Should the sling have been protected from the</p> <p>19 tines?</p> <p>20 A. Yes.</p> <p>21 Q. How should it have been protected?</p> <p>22 A. By putting in some type of material that</p>	<p style="text-align: right;">124</p> <p>1 that stuff, he didn't deny it.</p> <p>2 Q. He didn't deny what?</p> <p>3 A. When he was asked the questions about, that</p> <p>4 he was presented with that document and he didn't</p> <p>5 specifically say, No, I do not have any training in</p> <p>6 that.</p> <p>7 Q. Are you aware of any evidence that McTernan</p> <p>8 was familiar with the need to protect the sling?</p> <p>9 A. In his deposition testimony, I believe he</p> <p>10 testified that he didn't know.</p> <p>11 Q. Does that affect your opinions in any way?</p> <p>12 A. No.</p> <p>13 Q. Why?</p> <p>14 A. Because he wasn't the person that was doing</p> <p>15 the work. He was -- Meltech hired Austin Mohawk and</p> <p>16 Beechgrove, who subcontracted the work to White</p> <p>17 Construction to erect. They had the responsibility to</p> <p>18 do it correctly and to do it safely. That's part of</p> <p>19 their work scope. That's what you hire them to do.</p> <p>20 You don't hire somebody to -- I'll just leave it there.</p> <p>21 That's what they hired them to do. That's what their</p> <p>22 responsibilities were.</p>